

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amended After Comments)

401 KAR 10:029. General provisions.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. **136, 33 U.S.C. 1326(a), EO 2008-507, 2008-531 [Part 136]**

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. **[Part]** 131, 136, 16 U.S.C. 1531 through 1544 ~~[et seq.]~~, 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the ~~**[Environmental and Public Protection]**~~ cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031 ~~[401 KAR 5:002, 401 KAR 5:026, 401 KAR 5:030, and 401 KAR 5:031]~~ establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.**

This administrative regulation establishes[?] the commonwealth's surface water antidegradation

1 policy, provides [~~provide~~] for withdrawals of waters not meeting water quality standards, and
2 addresses [~~address~~] sample collection and analytical methodology[, and mixing zones[, ~~and~~
3 ~~variances for coal remining operations~~].

4 Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 10:026 through 401 KAR
5 10:031 [~~401 KAR 5:026 to 401 KAR 5:031~~] is to safeguard the surface waters of the
6 commonwealth for their designated uses, to prevent the creation of [~~any~~] new pollution of these
7 waters, and to abate [, if applicable,] [~~any~~] existing pollution.

8 (2) Where the quality of surface waters exceeds that necessary to support propagation of fish,
9 shellfish, wildlife, and recreation in and on the water, that quality shall be maintained and
10 protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination
11 and public participation provisions of the cabinet's continuing planning process, that allowing
12 lower water quality is necessary to accommodate important economic or social development in
13 the area in which the waters are located.

14 (a) For point source discharges, water quality shall be maintained and protected in these
15 waters according to the procedures specified in 401 KAR 10:030 [~~401 KAR 5:030~~], Section
16 1(2)(b) or (3)(b).

17 (b) In allowing degradation or lower water quality, the cabinet shall assure water quality
18 adequate to protect existing uses fully.

19 (c) [~~Further,~~] The cabinet shall assure that there shall be achieved the highest statutory and
20 regulatory requirements for waste treatment by all new and existing point sources and that
21 nonpoint sources of pollutants be controlled by application of all cost effective and reasonable
22 best management practices.

23 (3) Water quality shall be maintained and protected in a water categorized as an outstanding

national resource water according to the procedures specified in 401 KAR 10:030 [~~401-KAR 5:030~~], Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 10:031 [~~401-KAR 5:031~~], Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters occasionally do not meet [~~may, on occasion, not meet~~] the criteria established in 401 KAR 10:031 [~~401-KAR 5:031~~].

(1) Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards.

(2) The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters.

(3) The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, [~~401-KAR~~] 5:065, [~~401-KAR~~] 5:070, [~~401-KAR~~] 5:075, and [~~401-KAR~~] 5:080.

Section 3. Sample Collection and Analytical Methodology.

(1) All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 C.F.R. [**Part**] 136, as amended, if applicable.

(2) Sample collection and other methods not established in subsection (1) of this section [~~found in the above reference~~] may be used as [~~where~~] appropriate if they:

1 (a) ~~[(4)]~~ Meet commonly accepted quality assurance and quality control principles;

2 (b) ~~[(2)]~~ Are within the accuracy required for determining conformity or nonconformity with
3 water quality standards; and

4 (c) ~~[(3)]~~ Receive prior written approval by the cabinet.

5 Section 4. Mixing Zones. The following requirements shall apply to a mixing zone:

6 (1) ~~Upon request by the applicant for mixing zones for nonconventional pollutants~~ The
7 cabinet ~~may~~ shall ~~[may]~~ assign definable geometric limits for mixing zones for a discharge ~~of~~
8 ~~[or]~~ a pollutant or pollutants within a discharge based on the following criteria: ~~[-]~~

9 (a) Applicable limits shall include the linear distances from the point of discharge, surface
10 area involvement, volume of receiving water, and shall take into account other nearby mixing
11 zones; ~~[-]~~

12 (b) Dilution provided by assigned mixing zones shall not be allowed until applicable limits
13 are assigned by the cabinet in accordance with this section; ~~[-]~~

14 (c) In a stream or river, unless assigned on or before December 8, 1999, an assigned
15 mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third
16 (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area;

17 (d) In a lake or a reservoir, unless assigned on or before December 8, 1999, an assigned
18 mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth
19 (1/10) of the width of the lake, or reservoir at the discharge point;

20 (e) An assigned mixing zone shall be limited to an area or volume that shall not
21 adversely affect the designated uses of the receiving water and shall not be so large as to
22 adversely affect an established community of aquatic organisms;

23 (f) The location of a mixing zone shall not:

24 1. Interfere with fish spawning or nursery areas, fish migration routes, public water

1 supply intakes, or bathing areas;

2 2. Preclude the free passage of fish or other aquatic life; or

3 3. Jeopardize the continued existence of endangered or threatened aquatic species
4 listed under Section 4 of the Endangered Species Act, 16 U.S.C. 1531 through 1544, or
5 result in the destruction or adverse modification of their critical habitat;

6 (g) For thermal discharges, a successful demonstration conducted under Section 316(a)
7 of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this
8 section; and

9 (h) Unless assigned by the cabinet on or before September 8, 2004, there shall not be
10 mixing zones for bioaccumulative chemicals of concern.

11 1. A mixing zone that was assigned by the cabinet for a bioaccumulative chemical of
12 concern shall not expire later than September 8, 2014.

13 2.a. A bioaccumulative chemical of concern is one that accumulates in one (1) or more
14 aquatic organisms by a human health bioaccumulation factor of greater than 1000.

15 b. For the purposes of this administrative regulation, bioaccumulative chemicals of
16 concern shall consist of the following:

17 (i) alpha-Hexachlorocyclohexane;

18 (ii) beta-Hexachlorocyclohexane;

19 (iii) Chlordane;

20 (iv) DDD;

21 (v) DDE;

22 (vi) DDT;

23 (vii) delta-Hexachlorocyclohexane;

24 (viii) Dieldrin;

- 1 **(ix) Hexachlorobenzene;**
- 2 **(x) Hexachlorobutadiene;**
- 3 **(xi) Hexachlorocyclohexane;**
- 4 **(xii) Lindane;**
- 5 **(xiii) Mercury;**
- 6 **(xiv) Mirex;**
- 7 **(xv) Octachlorostyrene;**
- 8 **(xvi) PCBs;**
- 9 **(xvii) Pentachlorobenzene;**
- 10 **(xviii) Photomirex;**
- 11 **(xix) Toxaphene;**
- 12 **(xx) 1,2,3,4-Tetrachlorobenzene;**
- 13 **(xxi) 1,2,4,5-Tetrachlorobenzene; and**
- 14 **(xxii) 2,3,7,8-TCDD (Dioxin).**

15 (2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic
16 life in 401 KAR 10:031 [~~401 KAR 5:031~~] shall not exist within an assigned mixing zone or in the
17 discharge itself unless a zone of initial dilution is assigned.

18 (a) A zone of initial dilution shall [~~may~~] be assigned pursuant to subsection (3) of this
19 section.

20 (b) Chronic criteria for the protection of aquatic life and criteria for the protection of human
21 health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

22 (3) The following requirements shall apply to a zone of initial dilution:

23 (a) The cabinet shall require an applicant to provide a technical evaluation for a zone of

1 initial dilution;

2 (b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of
3 aquatic life at the edge of the assigned zone of initial dilution, except, numeric acute criteria may
4 be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are
5 not sufficient to cause acute toxicity; and

6 (c) Unless assigned on or before December 8, 1999 ~~[the effective date of this administrative~~
7 ~~regulation]~~, a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.

8 (4) Unless assigned on or before the most recent effective date of this administrative
9 regulation, a zone of initial dilution for a pollutant shall be available only to a submerged high-
10 rate multiport outfall structure with a velocity greater than or equal to three (3) meters per second
11 and shall be limited in size to the most restrictive of the following:

12 (a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the
13 outfall structure to the edge of the regulatory mixing zone in a spatial direction;

14 (b) The acute criteria shall be met within a distance of fifty (50) times the square root of the
15 cross-sectional area of a discharge port, in a spatial direction; or

16 (c) The acute criteria shall be met in a horizontal direction within a distance of five (5) times
17 the natural water depth that prevails under mixing zone design conditions, and exists before the
18 installation of a discharge outlet.

19 ~~[(d) Residence times within the zone of initial dilution for drifting organisms shall not~~
20 ~~exceed fifteen (15) minutes.~~

21 ~~(5) The location of a mixing zone shall not:~~

22 ~~(a) Interfere with fish spawning or nursery areas, fish migration routes, public water~~
23 ~~supply intakes, or bathing areas;~~

1 ~~(b) Preclude the free passage of fish or other aquatic life; or [and]~~

2 ~~(c) Jeopardize the continued existence of [any] endangered or threatened aquatic species~~
3 ~~listed under Section 4 of the Federal Endangered Species Act, 16 U.S.C. 1531 through 1544~~
4 ~~[et seq.], or result in the destruction or adverse modification of their critical habitat.~~

5 ~~(d) Result in a residence time within the mixing zone for drifting organisms of greater~~
6 ~~than one (1) hour.~~

7 ~~(6) Unless assigned on or before December 8, 1999 [the effective date of this~~
8 ~~administrative regulation], an assigned mixing zone, from the point of discharge in a spatial~~
9 ~~direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half~~
10 ~~(1/2) of the cross-sectional area.~~

11 ~~(7) In a lake or a reservoir, unless assigned on or before December 8, 1999 [the effective~~
12 ~~date of this administrative regulation], an assigned mixing zone, from the point of discharge~~
13 ~~in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir~~
14 ~~at the discharge point.~~

15 ~~(8) An assigned mixing zone shall be limited to an area or volume which will not~~
16 ~~adversely affect the designated uses of the receiving water[,], and shall not be so large as to~~
17 ~~adversely affect an established community of aquatic organisms.~~

18 ~~(9) For thermal discharges, a successful demonstration conducted under Section 316(a) of~~
19 ~~the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section.~~

20 ~~(10) Unless assigned by the cabinet on or before September 8, 2004 [the effective date of~~
21 ~~this administrative regulation], there shall not be mixing zones for bioaccumulative~~
22 ~~chemicals of concern.~~

23 ~~(a) A [Any] mixing zone that was assigned by the cabinet for a bioaccumulative chemical~~

1 ~~of concern shall not expire [no] later than September 8, 2014 [ten (10) years from the~~
2 ~~effective date of this administrative regulation].~~

3 ~~(b)1. A bioaccumulative chemical of concern is one that accumulates in one (1) or more~~
4 ~~aquatic organisms by a human health bioaccumulation factor of greater than 1000.~~

5 ~~2. For the purposes of this administrative regulation, bioaccumulative chemicals of~~
6 ~~concern shall consist of the following:~~

7 ~~a. [(a)] — alpha-Hexachlorocyclohexane;~~

8 ~~b. [(b)] beta-Hexachlorocyclohexane;~~

9 ~~c. [(c)] Chlordane;~~

10 ~~d. [(d)] DDD;~~

11 ~~e. [(e)] DDE;~~

12 ~~f. [(f)] DDT;~~

13 ~~g. [(g)] delta-Hexachlorocyclohexane;~~

14 ~~h. [(h)] Dieldrin;~~

15 ~~i. [(i)] Hexachlorobenzene;~~

16 ~~j. [(j)] Hexachlorobutadiene;~~

17 ~~k. [(k)] Hexachlorocyclohexane;~~

18 ~~l. [(l)] Lindane;~~

19 ~~m. [(m)] Mercury;~~

20 ~~n. [(n)] Mirex;~~

21 ~~o. [(o)] Octachlorostyrene;~~

22 ~~p. [(p)] PCBs;~~

23 ~~q. [(q)] Pentachlorobenzene;~~

1 **r. ~~[(r)] Photomirex;~~**

2 **s. ~~[(s)] Toxaphene;~~**

3 **t. ~~[(t)] 1,2,3,4-Tetrachlorobenzene;~~**

4 **u. ~~[(u)] 1,2,4,5-Tetrachlorobenzene; and~~**

5 **v. ~~[(v)] 2,3,7,8-TCDD (Dioxin).]~~**

6 ~~[Section 5. Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An~~
7 ~~applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge~~
8 ~~pollutants from or affected by a coal remining operation may request a variance from the water~~
9 ~~quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.~~

10 ~~(2) Application requirements:~~

11 ~~(a) The applicant shall comply with all KPDES permit application requirements, as set forth in~~
12 ~~401 KAR 5:060.~~

13 ~~(b) The applicant shall submit documentation from the Department for Surface Mining~~
14 ~~Reclamation and Enforcement (DSMRE) certifying that the proposed coal remining operation will~~
15 ~~be located on a remined area.~~

16 ~~(c) The applicant shall:~~

17 ~~1. Describe the hydrologic balance for the proposed coal remining operation, including:~~

18 ~~a. Results of a detailed water quality and quantity monitoring program, including seasonal~~
19 ~~variations, variations in response to precipitation events, and modeled baseline pollution loads~~
20 ~~using the monitoring program; and~~

21 ~~b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended~~
22 ~~solids, and any other water quality parameters requested by the cabinet;~~

23 ~~2. Submit the application for a permit from DSMRE;~~

1 ~~3. Submit, if not submitted in the application for a permit from DSMRE:~~

2 ~~a. Plans, cross sections, and schematic drawings describing the techniques for reducing the~~

3 ~~discharge of acid-forming materials, iron and manganese;~~

4 ~~b. A description and an explanation of the range of abatement levels that probably can be~~

5 ~~achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and~~

6 ~~manganese;~~

7 ~~c. A description of the spoil handling practices necessary to reduce the discharge of acid-~~

8 ~~forming materials, iron and manganese; and~~

9 ~~d. A detailed topographic map of the proposed coal remining operation, including the~~

10 ~~locations of the preexisting and proposed discharges; and~~

11 ~~4. Continue the water quality and quantity monitoring program described in subparagraph 1~~

12 ~~of this paragraph, and submit the results to the cabinet on a periodic basis until the cabinet makes a~~

13 ~~final permit decision. The cabinet shall evaluate the KPDES monitoring program and the DSMRE~~

14 ~~monitoring program for each applicant to avoid duplication and inconsistencies.~~

15 ~~(d) An applicant with an existing surface coal mining operation seeking a permit revision from~~

16 ~~DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the~~

17 ~~cabinet that:~~

18 ~~1. The applicant discovered discharges within the proposed coal remining area after the~~

19 ~~applicant's DSMRE permit was issued; and~~

20 ~~2. The applicant has not caused or contributed to the discharges.~~

21 ~~(3) Treatment requirements. If the cabinet issues a KPDES permit to discharge pollutants from~~

22 ~~or affected by a coal remining operation containing the variance described in subsection (1) of this~~

23 ~~section, the water quality based effluent limitations for pH, iron and manganese shall be~~

1 ~~established on a case by case basis. Compliance with those effluent limitations constitutes~~
2 ~~compliance with those water quality criteria for pH, iron and manganese set forth in 401 KAR~~
3 ~~5:031.~~

4 ~~(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055, the following~~
5 ~~prohibitions apply to this section:~~

6 ~~(a) A KPDES permit containing the water quality based variance of subsection (1) of this~~
7 ~~section shall not be issued unless the coal remining operation has applied for a permit from the~~
8 ~~Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7~~
9 ~~through 24, inclusive. The effective date of the KPDES permit shall not be sooner than the~~
10 ~~effective date of the permit issued by the Department for Surface Mining Reclamation and~~
11 ~~Enforcement.~~

12 ~~(b) A KPDES permit containing the water quality based variance of subsection (1) of this~~
13 ~~section shall not be issued for a surface coal mining operation which is not a coal remining~~
14 ~~operation located on a remined area.~~

15 ~~(c) A KPDES permit containing the water quality based variance of subsection (1) of this~~
16 ~~section shall not be issued which would allow the discharges of acid forming materials, iron or~~
17 ~~manganese to exceed the levels being discharged from the remined area before the coal remining~~
18 ~~operation begins.~~

19 ~~(d) A KPDES permit containing the water quality based variance of subsection (1) of this~~
20 ~~section shall not be issued if the applicant fails to demonstrate to the satisfaction of the cabinet that~~
21 ~~the coal remining operation will result in the potential for improved water quality from the~~
22 ~~remining operation over that existing prior to the remining operation, and that the information~~
23 ~~provided in the application is adequate for the cabinet to make an informed final permit decision.~~

1 ~~(e) A KPDES permit containing the water quality-based variance of subsection (1) of this~~
2 ~~section shall not be issued with effluent limitations less stringent than applicable technology based~~
3 ~~effluent limitations established in 401 KAR 5:065 or 401 KAR 5:080.~~

4 ~~(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, a KPDES~~
5 ~~permit containing the water quality-based variance of subsection (1) of this section shall not be~~
6 ~~issued for an existing surface coal mining operation unless:~~

7 ~~1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010,~~
8 ~~Section 20;~~

9 ~~2. The applicant discovered discharges within the proposed coal remining area after the~~
10 ~~applicant's DSMRE permit was issued; and~~

11 ~~3. The applicant has not caused or contributed to the discharges since August 3, 1977.~~

12 ~~Section 6. Federal Regulation Adopted Without Change. (1) The following federal regulation~~
13 ~~governs the subject matter of this administrative regulation and is adopted without change: 40~~
14 ~~C.F.R. Part 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1,~~
15 ~~2007 [2002], U.S. Environmental Protection Agency, U.S. Government Printing Office,~~
16 ~~Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328.~~

17 ~~(2) This federal regulation may be inspected, copied, or obtained, subject to applicable~~
18 ~~copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through~~
19 ~~Friday, 8 a.m. to 4:30 p.m.]~~

401 KAR 10:029 “General provisions.” (Amended After Comments) approved for promulgation:

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 10:029, Amended After Comments

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address the issues for water quality protection not covered in 10:026, 10:030, or 10:031. This administrative regulation is used in conjunction with those administrative regulations to form a complete protection program.
- (b) The necessity of this administrative regulation:** This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** This administrative regulation conforms to KRS 224.10-100 which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes the Commonwealth's surface water antidegradation policy (in conjunction with 401 KAR 10:030), provides for withdrawals of waters not meeting water quality standards, addresses sample collection and analytical methodology, requires the elimination of mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014, and does not allow new mixing zones for bioaccumulative chemicals of concern..
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation will assist in the administration of the statutes by providing specific requirements for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This amendment clarifies that, upon request by an applicant, the cabinet shall assign mixing zones and consider the geometric limits of such mixing zones.
- (b) The necessity of the amendment to this administrative regulation:** This amendment is necessary to establish revised measures to protect human health and aquatic life. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.
- (c) How the amendment conforms to the content of the authorizing statutes:** This

amendment conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment and 401 KAR 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes the Commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, and mixing zones.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by prohibiting discharges that would endanger human health, wildlife, or habitat.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides general provisions applicable to municipalities, campgrounds, subdivisions, businesses, marinas, residences, and government agencies with permitted discharges into surface waters of the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in questions (3) will have to:

- (a) meet water quality standards
- (b) addresses sample collection
- (c) establish analytical methodologies
- (d) eliminate mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014
- (e) not allow new mixing zones for bioaccumulative chemicals of concern

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with revisions to this administrative regulation will not result in costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Maintaining existing water quality may have a positive influence on revenues derived from water-based tourism and can result in good quality water for drinking water supplies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly. The existing budget for the Division of Water utilizes approximately \$800,000 in general funds and approximately \$240,000 in federal funds to implement this regulation. There are no initial costs to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes, tiering is applied in this administrative regulation. Dischargers with mixing zones and zones of initial dilution must comply with 401 KAR 10:029, Section 4. Dischargers with mixing zones must comply with the Endangered Species Act and must limit discharges of bioaccumulative chemicals of concern in mixing zones. Dischargers with zones of initial dilution must meet specific criteria specified in Section 4 of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 10:029

Contact Person: Sandy Gruzesky, Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation may affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Cannot be determined

Expenditures (+/-): Cannot be determined

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into streams, rivers, and publicly owned lakes and reservoirs. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 10:029

Contact Person: Sandy Gruzesky, Director

1. Federal statute or regulation constituting the federal mandate.

There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the antidegradation policy.

2. State compliance standards.

401 KAR 10:001, 10:026, 10:029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate.

The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

There are no stricter standards or additional or different responsibilities or requirements.